

April 16, 2012

Sarah S. Zamora
296 Van Buren Street
Colton, CA 92324

Re: Your Request for Advice
Our File No. A-12-044

Dear Ms. Zamora:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission (“the Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, nothing in this letter may be construed to evaluate any conduct that has already taken place.

QUESTIONS

(1) May your late husband’s committee use campaign funds to make donations to various charitable, educational, civic, and religious nonprofit organizations despite the fact that you have been unable to deposit the funds into a campaign bank account on behalf of your husband after withdrawing the funds in an attempt to organize your husband’s estate?

(2) May your previously terminated committee for city council accept a cashier’s check, returned to the committee by a charitable nonprofit organization, and donate the funds to another charitable nonprofit organization?

CONCLUSIONS

(1) Notwithstanding the one-bank account rule, your late husband’s committee may donate the surplus funds to charitable, educational, civic, and religious nonprofit organizations so long as the donations will not have a material financial effect on you or any member of your immediate family and the expenditures are fully reported on the committee’s next campaign statement as outlined below.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

(2) Your previously terminated committee may accept the returned cashier's check and donate the funds to another charitable nonprofit organization without reopening the committee so long as the donation will not have a material financial effect on you or any member of your immediate family and the terminated committee files a campaign statement disclosing the transactions as outlined below.

FACTS

You are the current treasurer for a campaign committee established by your late husband, prior to his death, while running for Mayor of the City Colton. Prior to your husband's death, the committee maintained its bank account at a local bank. However, upon the death of your husband, you closed the account in an effort to organize your husband's affairs, withdrawing the remaining \$4,717.22 from the account in cash. While you had intended to donate the withdrawn funds to local nonprofit organizations, you were informed orally through the Commission's telephone advice line that the funds could not be spent without first re-depositing the funds into a campaign bank account established on behalf of your husband's committee.

Notwithstanding the informal telephone assistance, your efforts to reopen a campaign account for your husband's committee have been unsuccessful as two local banks declined to open a committee account on behalf of a deceased candidate. At this time, you ask for the Commission's guidance in donating the funds to various nonprofit organizations despite the fact that you are unable to deposit the funds into a campaign bank account. More specifically, you would like to use the funds to pay for cashier's checks donating the funds to Colton High School, Bloomington High School, Slover Mountain High School, Washington High School, First Assembly of God Church, Centerpoint Church, and Friends of the Colton Library.

In addition, you posed a second unrelated question in a telephone conversation on March 26, 2012. While you have currently been appointed to fill your husband's position as mayor, you were previously a city council member from 2000-2004. Your committee for your term as a city council member was terminated in 2011. Upon terminating the committee, you made a payment for a cashier's check donating \$130.90 to a charitable nonprofit organization. However, the organization did not cash the cashier's check and has returned it you. In light of this unexpected refund, you ask whether you may accept the refund and use the funds to pay for a cashier's check donating the funds to another charitable organization.

ANALYSIS

(1) May your late husband's committee donate campaign funds despite the fact that you have been unable to deposit the funds into a campaign bank account after withdrawing the funds in an attempt to organize your husband's estate?

Section 85201 of the Act sets forth what is known as the "one-bank account rule." Under this rule, a candidate for elective office may establish only one campaign bank account and

controlled committee for each office sought. Section 85201 provides, in pertinent part, the following:

“(a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial institution located in the state.

“(b) As required by subdivision (f) of Section 84102, a candidate who raises contributions of one thousand dollars (\$1,000) or more in a calendar year shall set forth the name and address of the financial institution where the candidate has established a campaign contribution account and the account number on the committee statement of organization filed pursuant to Sections 84101 and 84103.

“(c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account.

“(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

“(e) All campaign expenditures shall be made from the account.”

You state that you withdrew funds from your late husband's campaign account shortly after his passing in an effort to organize his affairs, and were unaware of the technical consequences of withdrawing the funds. However, we cannot provide advice regarding the withdrawal of the funds because the Commission does not provide written advice relating to past actions. (See Regulation 18329(b)(8)(A) and (c)(4)(A).) Nonetheless, we note that the circumstances under which you withdrew the funds are not lost on the Commission and provide considerable evidence that you did not withdraw the funds for a wrongful purpose.

At this time, we can address your question regarding the permissible uses for the remaining campaign funds. While typically the one-bank account rule would require that the funds are deposited into a campaign bank account prior to the expenditure of the funds, your efforts to reopen a campaign bank account for your husband's committee have been denied by multiple banks. In these narrow circumstances, it would be unreasonable to insist on compliance with a rule when compliance with that rule is not feasible. (See *Rios* Advice Letter, No. A-11-198.) “[W]hen it is not possible to comply with the strict mandate of a law, it has long been settled that “impossibility” relieves a party from the duty of strict compliance.” (See *Reynolds* Advice Letter, No. I-12-010.)

Notwithstanding the one-bank account rule, campaign funds belonging to an official who dies while in office become surplus on the earlier of either June 30 or December 31 following the official's death. (Regulation 18951(a)(3).) The expenditure of surplus funds such as those funds

belonging to your late husband's committee is limited under Section 89519, which permits in subdivision (b)(3) the expenditure of surplus campaign funds for "[d]onations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer."

Based on the facts provided, you will use the surplus funds to pay for cashier's checks donating the funds to various charitable, educational, civic, and religious nonprofit organizations. So long as these donations will not have a material financial effect on you or any member of your immediate family, the Act does not prohibit you from making the donations despite your inability to first deposit the funds into a campaign account on behalf of your husband's committee. We caution, however, that the committee must ensure that the transactions are properly documented.² A receipt for the original withdrawal of the funds, a copy of the cashier's checks, and receipts from the recipient organizations should be maintained with the committee's campaign records. Moreover, each of the donations must be fully reported on the committee's next campaign statement (Commission Form 460).³ For purposes of reporting the expenditures, each payment made to a nonprofit organization should be disclosed on Schedule E.

(2) May your previously terminated committee for city council accept a cashier's check, returned to the committee by a charitable nonprofit organization, and donate the funds to another charitable nonprofit organization?

Regulation 18404.1(g)(1)(A) permits state and local candidate committees for elective office that have already been terminated to "accept a refund from a vendor or other person without reopening if the committee did not know of its entitlement to the refund prior to termination and the refund or refunds total no more than \$10,000." Accordingly, you may accept the refund for the purpose of contributing to another charitable nonprofit organization without reopening your committee for city council and without reopening a bank account in the name of the committee. As analyzed above, Section 89519(b)(3) permits the donation of surplus campaign funds to a "bona fide charitable nonprofit organization" so long as "no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer."

Again, we caution that the committee must ensure that the transactions are properly documented. A copy of the refunded cashier's check, a copy of the subsequent cashier's check, and a receipt from the recipient should be maintained with the committee's campaign records. Additionally, the refund and donation must be reported under Regulation 18404.1(g)(1)(C). For reporting purposes, the terminated committee must file an additional campaign statement

² Pursuant to Section 84104, each candidate, treasurer, and elected officer has the duty "to maintain detailed accounts, records, bill, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with [campaign disclosure provisions]."

³ Pursuant to Section 81002(a), "Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited."

reflecting the refund as a miscellaneous increase to case on Schedule I and the subsequent donation as an expenditure made to the charitable nonprofit organization on Schedule E.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division

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